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ALEXANDER L. STEVAS,
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No. 82-445

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

HAIM MIZRAHI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

HARVEY A. SCHNEIDER

Suite 400
924 Westwood Boulevard
Los Angeles, CA 90024
(213) 824-0069

Attorney for Petitioner

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Petitioner's Reply to Brief in Opposition to Petition for Writ of Certiorari (hereinafter "Reply") was forwarded to the Court for filing on or about December 14, 1982. A copy of the Reply is attached hereto. However, since this Court's order denying the Petition for

Writ of Certiorari was issued on December 13, 1982, the Reply was not filed but was returned to counsel for petitioner. Based on these facts, it seems too clear to doubt that the Reply and the Court's order crossed in the mail. It is also too clear to doubt that the Court's order denying the petition was made without considering the Reply and the appendix thereto.

In his Reply, petitioner pointed out that on December 2, 1982 the same panel of the United States Court of Appeals for the Ninth Circuit that decided his appeal issued its opinion in the case of United States v. Yitchak Ijo Perlmuter, No. 81-1533. A review of the court's opinion in Perlmuter (a copy of which is attached as Appendix "A" to the Reply) reveals that Perlmuter's conviction was reversed on the ground that the documents which reportedly

contained convictions sustained by Perlmuter in Israel were improperly admitted into evidence. Specifically, the Court of Appeals held that the documents were hearsay (and no exception to the hearsay rule was applicable) and that the documents were not properly authenticated. It will be recalled that these are the very objections petitioner claims should have been made by his trial counsel to the identical documents which were offered by the government at his trial.

Petitioner submits that the decision in Perlmuter established beyond doubt that petitioner was denied the effective assistance of counsel at his trial. Specifically, as was stated in the Reply:

> "In sum, the state of affairs which is present with respect to the present case and the Perlmuter case is as follows: Petitioner Mizrahi has been sentenced to prison, fined and

> deprived of his citizenship because his trial attorney failed to make basic hearsay and lack of authentication objections to the admissibility of the single most important item of evidence offered by the government -- the Israeli 'rap sheet' -- without which there could have been no conviction. On the other hand, Perlmuter remains free, with his citizenship intact, because his trial attorney did make the appropriate objections. Simply stated, it would be difficult to imagine facts which more clearly indicate that a defendant in a criminal case was denied the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution." (Reply, at pp. 4-5)

Based on the foregoing, it is respectfully submitted it was imperative that this Court have before it the Reply, with the attached opinion in Perlmuter, supra, before ruling on petitioner's Petition for Writ of Certiorari. Because it is clear the Perlmuter opinion was not

before the Court at the time the Petition for Writ of Certiorari was ruled upon, it is further submitted the Court should reconsider its ruling on the petition in light of that opinion.

WHEREFORE, it is respectfully prayed that this Petition for Rehearing be granted.

Dated: December 20, 1982

Harvey A. Schneider
HARVEY A. SCHNEIDER
Attorney for Petitioner

CERTIFICATION OF COUNSEL

The undersigned, being counsel for petitioner Haim Mizrahi, hereby certifies that this Petition is presented in good faith and not for delay. This Petition has been filed on the ground of intervening circumstances of substantial or controlling effect, namely, that the Court's order denying the Petition for Writ of Certiorari was issued without considering Petitioner's Reply to Brief in Opposition to Retition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and the appendix thereto. This Petition is restricted to the ground set forth above.

Harvey A. Schneider

HARVEY A. SCHNEIDER
Attorney for Petitioner

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

Carolyn Kassian, being first duly sworn, deposes and says: I am a citizen of the United States and a resident of the county aforesaid. I am over the age of 18 years and not a party to the within entitled action. My business address is 924 Westwood Boulevard, Suite 400, Los Angeles, CA 90024. On December 27, 1982 I served the within Petition for Rehearing of Order Denying Petition for Writ of Certiorari on the respondent in said action by placing a true copy thereof enclosed in a sealed envelope with priority postage thereon fully prepaid, in the United States mail at Los Angeles, California, the envelope addressed as

follows:

Solicitor General
U.S. Department of Justice
10th & Constitution Avenues
Washington, D.C. 20530

Mark H. Bonner
Assistant U.S. Attorney
312 North Spring Street
Los Angeles, CA 90012

Affiant makes this service for Harvey A. Schneider, Attorney for Haim Mizrahi, Petitioner herein. There is delivery service by United States mail at the places so addressed or there is regular communication by mail between the place of mailing and the places so addressed.

All parties required to be served in this matter have been served, as indicated above. (Rule 28.5)

Carolyn Kassian
CAROLYN KASSIAN

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On December 27, 1982, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Carolyn Kassian, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

/s/ GAYLE R. STEINMETZ
Notary Public in and for
said County and State